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Tax Return Errors and Frivolous Tax Arguments

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To help people filling out their tax forms avoid a variety of scams, schemes and errors, the Internal Revenue Service has made several guidance documents available on its Web site, IRS.gov.

Some of the errors are clearly frivolous positions that taxpayers may take in either a misguided or deliberate attempt to impede the government's tax administration function. These can leave a person facing taxes, interest and penalties, and in some cases, criminal prosecution. The IRS is concerned that some people may be victims of con artists and promoters who sell these schemes and then leave the taxpayers to fend for themselves when the IRS catches them.

Some errors are not evident on the face of the return, but may be discovered later when the IRS matches payment documents with the recipients' returns, or audits returns for particular items. For example, a taxpayer may fail to report wages, interest or dividend income. When the IRS later matches the payment records from employers, banks, brokerages, etc., and finds the omission, it notifies the taxpayer about the proposed additional tax, plus interest and any applicable penalty.

Still other mistakes are "math errors" — things that are obviously wrong and that the IRS has the authority to correct as it processes the returns. For example, a taxpayer may list an incorrect Social Security number (SSN) for a dependent, enter the wrong tax amount, or claim the Earned Income Tax Credit when the return shows no earned income. The IRS can deny the dependent's exemption amount until the taxpayer provides the correct SSN, change an incorrect tax amount, or remove an improperly claimed tax credit.

Among the new IRS documents cautioning taxpayers about errors and schemes are:

The Truth about Frivolous Tax Arguments

This Web-published document briefly but substantively addresses false arguments about the legality of not paying taxes or filing returns. It lays out the assertions and provides a summary of the law and relevant legal decisions involving these false claims. The IRS Chief Counsel's office prepared the original text in 2001 and has updated it each year since, adding new case citations and expanding the number of arguments

addressed to 21. This year, a separate section was created to address 16 additional frivolous arguments that have been made in Collection Due Process cases.

There are links to the document from “The Newsroom” section’s “What’s Hot” and “Scams/Consumer Alerts” pages, the “Tax Pro News” and the “Topics for Individuals” pages of the IRS Web site. The direct URL is www.irs.gov/pub/irs-utl/friv_tax.pdf.

Revenue Rulings

The IRS has issued eight rulings dealing with specific frivolous positions. These present authoritative legal guidance for taxpayers and preparers who may encounter the false positions in promotional materials or news accounts. The rulings deal with frivolous arguments known by these names:

- “claim of right” (Rev. Rul. 2004-29)
- “corporation sole” (Rev. Rul. 2004-27)
- “home-based business” (Rev. Rul. 2004-32)
- “removal from the tax system and chargeback debts” (Rev. Rul. 2004-31)
- “reparations” (Rev. Rul. 2004-33)
- “Section 861” (Rev. Rul. 2004-30)
- “Section 911” (Rev. Rul. 2004-28) and
- “zero returns” (Rev. Rul. 2004-34)

The Dirty Dozen

News Release IR-2004-26 focuses on the 12 schemes that the IRS has seen most frequently in the past year. The IRS had issued various warnings about individual schemes over the years and grouped them into a list in 2001. The next year, it expanded the list to 12 and has updated it annually.

Among this year’s Dirty Dozen are the misuse of trusts, “claim of right” and “corporation sole” returns, offshore transactions, “Section 861” employment tax schemes and improper claims for the Disabled Access Credit.

Warning Lists

The IRS recently issued two notices warning taxpayers about specific errors to avoid:

- Notice 2004-22 lists frivolous positions that taxpayers have recently been taking on their returns. These lack any foundation in law and taxpayers asserting them on a return may incur a \$500 penalty. Those who pursue such frivolous arguments before the Tax Court face a penalty of up to \$25,000.
- Notice 2004-13 lists both common math errors that the IRS corrects during processing as well as mistakes that it usually discovers later. Taxpayers can avoid refund delays and follow-up letters by filing accurate returns.